IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.371 OF 2006
IN
SUMMARY SUIT NO.1339 OF 2006

Standard Chartered Bank. ...Plaintiff.
Vs.
Neolite Polymer Industries Pvt. Ltd. ...Defendant.
....
Mr.Zubin Beharamkamdin with Mr. Vivek Vashi i/b. M/s. Amarchand & Mangaldas & Suresh A. Shroff & Co. for the Plaintiff.
Mr.Prateek Sakhseria with Mr. Vivek Kantawala for the Defendant.
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CORAM : DR.D.Y.CHANDRACHUD, J.
4th May 2007.

P.C.:

The suit has been instituted under Order 37 of the Code of Civil Procedure, 1908 for the recovery of an amount of US $ 502,437.00 being the principal amount of two Bills of Exchange, namely, Exhibits 'B1' and 'B2' to the Plaint, together with interest in the amount of US $ 267,226.03 being interest computed at the rate of 18% per annum from the due date until the date of the suit. Interest has also been claimed from the date of the institution of the suit until payment or realisation.

2. The Bills of Exchange were drawn by an entity by the

name of Ransat PLC and were accepted by the Defendant. The Bills of Exchange were drawn in London and were payable at 60 days from the date of acceptance at the order of the Standard Chartered Bank. Notices of demand were issued by the Plaintiff on 22nd November 2005 and on 7th April 2006. Apart from a letter dated 9th May 2006 stating that the notice dated 25th November 2005 had not been received, there was no further communication. Eventually, the suit has been instituted for the recovery of the outstanding dues under the Bills of Exchange together with interest.

3. Four defences have been urged at the hearing of the Summons for Judgment, these being: (i) The Bills of Exchange have not been duly stamped; (ii) The Bills of Exchange were not noted or protested; (iii) There was no notice of dishonour; and (iv) The Plaintiff is not entitled to claim interest under Section 80 of the Negotiable Instruments Act, 1881 which is only applicable to Indian Bills of Exchange. Each of the defences can be taken up for consideration seriatim.

4. In so far as the defence that the bills have not been

duly stamped is concerned, Section 3 of the Indian Stamp Act, 1899 provides for a charge of stamp duty inter alia on every Bill of Exchange payable otherwise than on demand. Article 13 of the Schedule to the Stamp Act provides for various rates of stamp duty in respect of Bills of Exchange which are payable otherwise than on demand. Section 2(3) of the Stamp Act contains a definition of a Bill of Exchange payable on demand and the definition is to the following effect :

> "(3) Bill of exchange payable on demand .- "Bill of exchange payable on demand" includes-
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> (a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;
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> (b) an order for the payment of any sum of money weekly, monthly, or at any other stated period; and
>
> (c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn;"

Under Clause (b) a Bill of Exchange continues to remain one payable on demand where it contains an order for the payment of any sum of money weekly, monthly, or at any other stated period.

Section 35 of the Act provides that an instrument chargeable with duty shall not be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, unless such instrument is duly stamped. Clause (a) of the proviso prior to its amendment by the Finance Act of 2006 was to the following effect :

> "(a) any such instrument not being an instrument chargeable with a duty not exceeding ten naye paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;"

Bills of Exchange and promissory notes were excluded from the coverage of clause (a) of the proviso to the Indian Stamp Act as it earlier stood. The Finance Act of 2006 amended the provisions of Section 35 by deleting the words "not being an instrument chargeable with a duty not exceeding ten naye paise only or a Bill of Exchange or a promissory note, shall, subject to all just exceptions". Instead of the aforesaid words, the word "shall" was substituted. The net consequence, therefore, of the amended

provisions of the Indian Stamp Act is that all instruments are now capable of being admitted in evidence on the payment of the duty with which an instrument is chargeable or the deficit stamp duty in the case of deficiently stamped instrument together with penalty as prescribed. In the present case, the Bills of Exchange have admittedly been stamped subsequently in 2006. The effect of the amendment of Section 35 by the Finance Act of 2006 is to remove the bar on the admission of Bills of Exchange and promissory notes which have not been stamped or which were insufficiently stamped subject to due stamp duty and penalty being paid. Upon the payment of the requisite stamp duty, the embargo which is imposed by the substantive provisions of Section 35 is lifted and the Bills of Exchange are admissible in evidence.

5. The next defence which needs to be addressed is that the Bills of Exchange were not noted or protested. Section 104 of the Negotiable Instruments Act, 1881 provides that a foreign Bill of Exchange must be protested for dishonour when such protest is required by the law of the place where the Bill of Exchange is drawn. The Bills of Exchange in the present case, were drawn in London. Sections 51 and 52 of the Bill of Exchange Act, 1882 in

England are the relevant statutory provisions which govern. Sub-section (1) of Section 51 provides that where an inland bill has been dishonoured it may, if the holder thinks fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such Bill in order to preserve the recourse against the drawer or indorser. An inland Bill of Exchange is defined by Section 4 inter alia as one which is both drawn and payable within the British Isles. In the present case, it is undisputed that both the bills were drawn in London as is evident from the tenor of the Bills. The Bills do not stipulate that they would be payable outside the British Isles. The Bills of exchange are “inland bills” for the purpose of the Bills of Exchange Act, 1882 in England. Sub-section (1) of Section 52 of the English Act provides that when a Bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable. Sub-section (3) of Section 52 provides that in order to render the acceptor of a Bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him. In view of this specific provisions, there is no merit in the second defence.

6. The third defence that there was no notice of dishonour

is again answered by the provisions of Section 52(3) of the Bills of Exchange Act, 1882 to which a reference has already been made. Under the English Law, in order to render the acceptor of the bill liable, it is not necessary that notice of dishonour should be given to him.

7. The first three defences are wholly lacking in any merit whatsoever.

8. The fourth defence is that the provisions of Section 80 of the Negotiable Instruments Act, 1881 would not be available to a suit which has been instituted on a foreign Bill of Exchange. Section 80 provides that when no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument be calculated at the rate of eighteen per cent per annum from the date at which the same ought to have been paid by the party charged, until tender or realization. However, it would be material to note that Section 134 of the Negotiable Instruments Act, 1881 provides that in the absence of a contract to the contrary, the liability of the maker or drawer of a

foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable. The attention of the Court is drawn to the provisions of Section 57 of the Bill of Exchange Act 1882 under which provision is made for a measure of damages which shall be deemed to be liquidated damages. The holder is empowered to recover from any party liable on the Bill, interest thereon from the time of presentment for payment if the Bill is payable on demand and from the maturity of the Bill any other case.

9. The Defendant has absolutely no defence to the suit in so far as the claim for the principal sum due under the Bills of Exchange is concerned. However, with a view to affording the Defendant an opportunity to contest the suit as regards the claim for the principal sum due, it would be appropriate and proper to grant leave to defend to the Defendant subject to a condition of deposit of the principal amount of the Bills. Having regard to the nature of the defence on the issue of interest, unconditional leave to defend is grant confined to the claim for interest.

10. Hence, the following order :

(i) Conditional on the Defendant depositing the equivalent in Indian rupees of an amount corresponding to US $ 502,437.00 (being the principal amount due under the Bills) within a period of eight weeks from today, the Defendant would be entitled to leave to defend the suit in so far as the claim to the principal amount due under the Bills is concerned;

(ii) Upon deposit of the aforesaid amount, the Plaintiff would be entitled to withdraw the amount so deposited, subject to furnishing solvent security to the satisfaction of the Prothonotary & Senior Master;

-(iii) In the event that the Plaintiff fails to furnish solvent security to the satisfaction of the Prothonotary & Senior Master within 12 weeks from the date of deposit, the amount shall be invested in a Nationalized Bank to abide by the result of the suit;

-(iv) The Defendant is granted unconditional leave to defend

the suit on the question of interest.

The Summons for Judgment is disposed of.

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